

## HOUSE BILL NO. 169

INTRODUCED BY R. HAMILTON

BY REQUEST OF THE OFFICE OF PUBLIC INSTRUCTION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING TUITION PAYMENTS FOR HOMELESS CHILDREN;  
AMENDING SECTIONS 20-5-101 AND 20-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 20-5-101, MCA, is amended to read:

**"20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit a child to a school  
in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but is not  
yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under  
the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under  
6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit  
waiving the age provision of this section. The trustees may also admit an individual who has graduated from high  
school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision  
of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in ~~the Stewart B. McKinney~~  
~~Homeless Assistance Act (Public Law 100-77)~~ 42 U.S.C. 11302, to a school in the district regardless of residence.  
The trustees may not require an out-of-district attendance agreement or tuition for a homeless child. However,  
the superintendent of public instruction shall pay the amount of the tuition obligation for the children described  
in this subsection who are placed in youth shelter care facilities, as defined in 52-2-602, and reported pursuant  
to 20-5-324.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title."

**Section 2.** Section 20-5-321, MCA, is amended to read:

**"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection

1 (1)(c) may continue to attend the elementary school after the other child has left the high school.

2 (d) the child is living in an emergency or transitional shelter and is homeless, as defined in 42 U.S.C.  
3 11302, is living under the protective care of a state agency, or has been adjudicated to be a youth in need of  
4 intervention or a delinquent youth, as defined in 41-5-103;

5 (e) the child is required to attend school outside of the district of residence as the result of a placement  
6 in foster care or a group home licensed by the state; or

7 (f) the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502.

8 (2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child  
9 attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an  
10 out-of-district attendance agreement in consultation with an appropriate official of the district that the child will  
11 attend.

12 (b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition  
13 and transportation as provided in 20-5-323 and Title 20, chapter 10.

14 (c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the  
15 district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity  
16 and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,  
17 any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

18 (ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of  
19 residence, or a state agency.

20 (3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the  
21 district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of  
22 attendance shall:

23 (a) notify the county superintendent of schools of the county of the child's residence of the approval of  
24 the agreement within 10 days; and

25 (b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to  
26 the superintendent of public instruction for approval for payment under 20-5-324.

27 (4) Unless the child is a child with a disability who resides in the district, the trustees of the district where  
28 the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find  
29 that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected  
30 by the acceptance of the child."

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2 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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4 NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the

5 meaning of 1-2-109, to tuition payments for attendance during the 2008-2009 school year.

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